

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

QUINSTREET, INC.,)
)
Plaintiff,)
)
v.) C. A. No. 06-495-SLR
)
)
EPICREALM LICENSING, LP,)
)
Defendant.)

**DEFENDANT'S ANSWERING BRIEF IN RESPONSE TO
PLAINTIFF'S REVISED MOTION FOR LEAVE TO
FILE AMENDED COMPLAINT FOR DECLARATORY JUDGMENT**

OF COUNSEL:

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*Attorneys for Defendant
epicRealm Licensing, LP*

Dated: October 31, 2007

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TABLE OF AUTHORITIES

Cases

Affinion Loyalty Group, Inc. v. Maritz, Inc.,
2006 WL 1431065 (D. Del. May 22, 2006)..... 3

Gen. Battery Corp. v. Globe-Union, Inc.,
100 F.R.D. 258 (D. Del. 1982) 3

Statutes

Fed. R. Civ. P., Rule 25 1, 2

EpicRealm Licensing, LP (“epicRealm”) and Parallel Networks, LLC (“Parallel Networks”), as the new real party in interest, hereby oppose Plaintiff QuinStreet, Inc.’s (“QuinStreet’s”) Revised Motion for Leave to File Amended Complaint for Declaratory Judgment (“motion for leave”). (D.I. 48.) QuinStreet’s proposed amended complaint names epicRealm as the defendant and counterclaimant in this action even though—as QuinStreet well knows—epicRealm assigned to Parallel Networks all right, title and interest in the two patents in suit,¹ including the right to enforce the patents in suit and to recover for past infringement. Moreover, effective October 31, 2007, epicRealm was dissolved by the state of Delaware and ceased to exist as a legal entity. Consequently, because epicRealm no longer has any interest in the patents in suit and no longer exists as a legal entity, QuinStreet’s motion for leave should be denied.

Parallel Networks is attempting to work with QuinStreet to reach an agreement to substitute Parallel Networks for epicRealm in the action. In the event no agreement is reached, Parallel Networks will file a motion under Rule 25(c), Fed. R. Civ. P., to substitute Parallel Networks as the appropriate defendant and counterclaimant in the action.

I. Nature and State of the Proceedings

This action for declaratory judgment was filed on August 8, 2006. At the status conference on September 20, 2007, epicRealm informed the Court that all right, title and interest in the patents in suit had been transferred to Parallel Networks as a new entity. That transfer occurred in August of 2007. EpicRealm further stated that it would work with Oracle and QuinStreet to reach an agreement to substitute Parallel Networks for epicRealm as the real party in interest in the two actions.

¹ United States Patent No. 5,894,554 (the ““554 patent”) and United States Patent No. 6,415,335 (the ““335 patent”) (collectively, the “patents in suit”).

At the October 29, 2007 status hearing, Oracle and epicRealm reported to the Court that the parties had reached an agreement to dismiss epicRealm from the action without prejudice and to substitute Parallel Networks for epicRealm as the real party in interest. Parallel Networks and Oracle are working on the appropriate filings to effect the substitution. As of the filing of this answering brief, QuinStreet has not agreed to the substitution, nor has QuinStreet provided any valid basis for withholding its agreement to substitute. Accordingly in this action, in the event no agreement is reached with QuinStreet, epicRealm will file a motion under Rule 25(c), Fed. R. Civ. P., to substitute Parallel Networks for epicRealm as the real party in interest.

II. Summary of the Argument

1. There is no dispute that all right, title and interest in the patents in suit has been transferred from epicRealm as the presently named defendant and counterclaimant to Parallel Networks, including the right to enforce the patents and recover for past infringement. *See Exhibits A, B and C hereto.* As a consequence, Parallel Networks should be substituted for epicRealm as the real party in interest. Because QuinStreet's proposed amended complaint continues to improperly include epicRealm as a defendant and counterclaimant, its motion for leave to file its improperly amended complaint should be denied.

III. Statement of Facts

In support of its opposition, epicRealm and Parallel Networks, as the real party in interest, state as follows:

1. The two patents in suit are directed to, among other things, systems and methods for managing dynamic web page generation requests. QuinStreet initiated this action against epicRealm by filing its original complaint for declaratory judgment seeking a declaration of noninfringement for all of its software products used in conjunction with the delivery of dynamic web pages. (D.I. 1.) In August 2007, epicRealm transferred all right, title and interest in the

patents in suit to Parallel Networks,² including the right to enforce those patents and the right to recover for past infringement. *See Exhibits A and B.* A copy of the assignment of all right, title and interest in the patents in suit to Parallel Networks has been filed with the United States Patent and Trademark Office and is attached to this opposition brief as Exhibit A. As seen in Exhibit A, epicRealm now has no right, title or interest in the patents in suit. In further support is the affidavit of Terry Fokas establishing without question that all interest in the patents in suit has been transferred to Parallel Networks. (Exhibit B.) Furthermore, on October 31, 2007, epicRealm was dissolved. A file-stamped copy of the certificates of dissolution for epicRealm as the presently named defendant and counterclaimant (and its general partner, epicRealm Licensing, LLC) is attached to this answering brief as Exhibit C. *See also,* Exhibit B.

2. Plainly, the actual controversy now between the parties as raised by QuinStreet's action is between Parallel Networks and QuinStreet, not between epicRealm and QuinStreet.

IV. Argument

In an action for patent infringement, when the patents involved in the action are assigned by the patent owner to a third party, substituting the third party for the original party pursuant to Rule 25(c) is the appropriate procedure for bringing that third party into the litigation. *See Affinion Loyalty Group, Inc. v. Maritz, Inc.*, 2006 WL 1431065, at *2 (D. Del. May 22, 2006); *see also Gen. Battery Corp. v. Globe-Union, Inc.*, 100 F.R.D. 258, 262-263 (D. Del. 1982).

Thus, because all right, title and interest in the two patents in suit, including the right to sue for any rights previously held by epicRealm, is now held by Parallel Networks, QuinStreet's proposed motion for leave should be denied because Parallel Networks—not epicRealm—is the

² Parallel Networks is a limited liability company organized under the laws of the State of Texas. (Exhibit B.)

only proper defendant and counterclaimant. Consequently, QuinStreet's present motion for leave should be denied.

CONCLUSION

For the foregoing reasons, this Court should deny QuinStreet's motion for leave to file an amended complaint.

Respectfully submitted,

POTTER ANDERSON & CORROON LLP

OF COUNSEL:

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Dated: October 31, 2007
828849 / 31393

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*Attorneys for Defendant
epicRealm Licensing, LP*

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

CERTIFICATE OF SERVICE

I, David E. Moore, hereby certify that on October 31, 2007, the attached document was electronically filed with the Clerk of the Court using CM/ECF which will send notification to the registered attorney(s) of record that the document has been filed and is available for viewing and downloading.

I further certify that on October 31, 2007, I have Electronically Mailed the document to the following person(s):

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EXHIBIT A

USPTO 9/11/2007 9:41:37 PM PAGE 2/005 Fax Server
 TO:B. K. DRINKWATER, C/O BAKER BOTTS L.L.P. COMPANY:2001 ROSS AVENUE



UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
 DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE

SEPTEMBER 10, 2007

PTAS



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500350891A

**UNITED STATES PATENT AND TRADEMARK OFFICE
 NOTICE OF RECORDATION OF ASSIGNMENT DOCUMENT**

THE ENCLOSED DOCUMENT HAS BEEN RECORDED BY THE ASSIGNMENT DIVISION OF
 THE U.S. PATENT AND TRADEMARK OFFICE. A COMPLETE MICROFILM COPY IS
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 REFERENCED BELOW.

PLEASE REVIEW ALL INFORMATION CONTAINED ON THIS NOTICE. THE
 INFORMATION CONTAINED ON THIS RECORDATION NOTICE REFLECTS THE DATA
 PRESENT IN THE PATENT AND TRADEMARK ASSIGNMENT SYSTEM. IF YOU SHOULD
 FIND ANY ERRORS OR HAVE QUESTIONS CONCERNING THIS NOTICE, YOU MAY
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 MAIL STOP: ASSIGNMENT SERVICES BRANCH, P.O. BOX 1450, ALEXANDRIA, VA 22313.

RECORDATION DATE: 09/10/2007 REEL/FRAME: 019795/0968
 NUMBER OF PAGES: 5

BRIEF: NUNC PRO TUNC ASSIGNMENT (SEE DOCUMENT FOR DETAILS).
 DOCKET NUMBER: 066241.0146

ASSIGNOR:
 EPICREALM LICENSING, LP DOC DATE: 08/31/2007

ASSIGNEE:
 PARALLEL NETWORKS, LLC
 1700 PACIFIC AVENUE
 SUITE 2320
 DALLAS, TEXAS 75201

SERIAL NUMBER: 08636477 FILING DATE: 04/23/1996
 PATENT NUMBER: 5894554 ISSUE DATE: 04/13/1999
 TITLE: SYSTEM FOR MANAGING DYNAMIC WEB PAGE GENERATION REQUESTS BY
 INTERCEPTING REQUEST AT WEB SERVER AND ROUTING TO PAGE SERVER
 THEREBY RELEASING WEB SERVER TO PROCESS OTHER REQUESTS

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TO:B. K. DRINKWATER, C/O BAKER BOTTS L.L.P. COMPANY:2001 ROSS AVENUE

019795/0968 PAGE 2

SERIAL NUMBER: 09234048

FILING DATE: 01/19/1999

PATENT NUMBER: 6415335

ISSUE DATE: 07/02/2002

TITLE: SYSTEM AND METHOD FOR MANAGING DYNAMIC WEB PAGE GENERATION REQUESTS

ASSIGNMENT SERVICES BRANCH
PUBLIC RECORDS DIVISION

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 TO:B. K. DRINKWATER, C/O BAKER BOTTS L.L.P. COMPANY:2001 ROSS AVENUE

PATENT ASSIGNMENT	
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Electronic Version v1.1
 Stylesheet Version v1.1

09/10/2007
 500350891

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	NUNC PRO TUNC ASSIGNMENT
EFFECTIVE DATE:	08/10/2007

CONVEYING PARTY DATA

Name	Execution Date
EPICREALM LICENSING, LP	08/31/2007

RECEIVING PARTY DATA

Name:	PARALLEL NETWORKS, LLC
Street Address:	1700 Pacific Avenue
Internal Address:	Suite 2320
City:	Dallas
State/Country:	TEXAS
Postal Code:	75201

PROPERTY NUMBERS Total: 2

Property Type	Number
Patent Number:	5894554
Patent Number:	6415335

CORRESPONDENCE DATA

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Correspondence will be sent via US Mail when the fax attempt is unsuccessful.
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 Email: b.k.drinkwater@bakerbotts.com
 Correspondent Name: B. K. Drinkwater, c/o Baker Botts L.L.P.
 Address Line 1: 2001 Ross Avenue
 Address Line 2: Suite 600
 Address Line 4: Dallas, TEXAS 75201

CH \$80.00 5894554

ATTORNEY DOCKET NUMBER:	066241.0146
NAME OF SUBMITTER:	B. K. Drinkwater

USPTO 9/11/2007 9:41:37 PM PAGE 5/005 Fax Server

TO:B. K. DRINKWATER, C/O BAKER BOTTS L.L.P. COMPANY:2001 ROSS AVENUE

Total Attachments: 3

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PATENT ASSIGNMENT

WHEREAS, EPICREALM LICENSING, LP (hereafter "Assignor"), a Delaware limited partnership, having an address of 1700 Pacific Avenue, Suite 2320, Dallas, Texas 75201, is the owner of the patents and patent applications set forth on Exhibit A hereto and the inventions described and claimed therein (hereafter the "Patent Property"); and

WHEREAS, PARALLEL NETWORKS, LLC (hereafter "Assignee"), a Texas limited liability company, having an address of 1700 Pacific Avenue, Suite 2320, Dallas, Texas 75201, did acquire all right, title and interest in and to the Patent Property as the result of an Asset Purchase Agreement effective August 10, 2007.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor does hereby sell, assign, transfer and set over *nunc pro tunc* to Assignee, all its right, title and interest in and to the Patent Property, as well as all provisionals, continuations, divisions, and continuations-in-part of said Patent Property, and all reissues, reexaminations, and extensions thereof, the same to be held and enjoyed by Assignee for its own use and benefit, and for the use and benefit of its successors, assigns, or legal representatives, to the end of the term or terms for which such Patent Property may be granted or reissued, as fully and entirely as the same would have been held and enjoyed by Assignor if this assignment and sale had not been made.

Assignor also assigns to Assignee, all right, title and interest in and to the inventions disclosed in said Patent Property throughout the world, including the right to file applications and obtain patents, utility models, industrial models and designs for said Patent Property in its own name throughout the world, including all rights to publish cautionary notices

reserving ownership of said inventions and all rights to register said Patent Property in appropriate registries; and Assignor further agrees to execute any and all powers of attorney, applications, assignments, declarations, affidavits, and any other papers in connection therewith necessary to perfect such right, title and interest in Assignee.

Assignor also assigns unto Assignee all claims for damages by reason of infringement prior to the assignment date of the Patent Property throughout the world, with the right to sue for and collect the same for its own use and benefit, and for the use and benefit of its successors, assigns and other legal representatives.

Assignor, at the expense of Assignee, will testify in any legal proceedings, sign all lawful papers, execute all provisional, divisional, continuation, continuation-in-part, reissue and substitute applications, make lawful oaths and declarations, and generally do everything possible to vest title in Assignee and to aid Assignee to obtain and enforce proper protection for said Patent Property in all countries.

IN WITNESS WHEREOF, Assignor and its duly authorized representative has caused this Patent Assignment to be executed on the date and in the capacity shown below.

EPICREALM LICENSING, LP

By: EPICREALM LICENSING, LLC,
A Delaware Limited Liability Company
Its: General Partner

By:

Terry Pokes
Its: Managing Partner
Date: 10/31/2007

EXHIBIT A

U.S. Patents

<u>Patent No.</u>	<u>Issue Date</u>	<u>Title</u>
5,894,554	13 Apr 1999	System for Managing Dynamic Web Page Generation Requests by Intercepting Request at Web Server and Routing to Page Server Thereby Releasing Web Server to Process Other Requests.
6,415,335	02 Jul 2002	System and Method for Managing Dynamic Web Page Generation Requests.

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ORACLE CORPORATION and)
ORACLE U.S.A. INC.,)
Plaintiffs,) C.A. No. 06-cv-414 (SLR)
v.)
EPICREALM LICENSING, L.P.,)
Defendant.)

**AFFIDAVIT OF TERRY FOKAS IN SUPPORT OF
DEFENDANT'S MOTION TO SUBSTITUTE PARTIES
PURSUANT TO RULE 25(C), FED.R.CIV.P.**

I, Terry Fokas, do declare and state as follows:

1. I am the Managing Partner of epicRealm Licensing, LLC, which is the General Partner of epicRealm Licensing, LP, the defendant and counter-plaintiff in the above-captioned litigation and have the authority to submit this affidavit on behalf of epicRealm Licensing, LP.

2. On August 31, 2007, epicRealm Licensing, LP, assigned all right, title and interest in and to U.S. Patent Nos. 5,894,554 and 6,415,335 (the "patents in suit") to Parallel Networks, LLC, a Texas limited liability company. EpicRealm Licensing, LP, retained no right, title, or interest in the patents in suit and through the remainder of its existence as a legal entity will acquire no right, title, or interest in the patents in suit. Parallel Networks received the right to enforce the patents in suit and the right to recover for all infringement, including all past infringement. EpicRealm Licensing, LP, retained no right to enforce the patents in suit or to recover for any infringement, including any past infringement. A true and correct copy of the

documents reflecting the transfer of ownership in the patents in suit as recorded in the United States Patent and Trademark Office is attached hereto.

3. I am in the process of winding down the business of epicRealm Licensing, LP. I will be overseeing the dissolution of epicRealm Licensing, LP, which is expected to occur on or before October 31, 2007, after which time epicRealm Licensing, LP, will cease to exist as a legal entity.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: October 16, 2007

Terry Fokas

Sworn to before me this

16th day of October, 2007

Amy H. Erickson
Notary Public

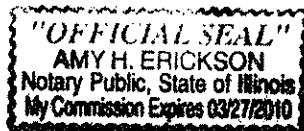


EXHIBIT C

Delaware

PAGE 1

The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THAT THE CERTIFICATE OF LIMITED PARTNERSHIP OF THE "EPICREALM LICENSING, LP", WAS RECEIVED AND FILED IN THIS OFFICE THE TWENTY-SEVENTH DAY OF DECEMBER, A.D. 2005.

AND I DO HEREBY FURTHER CERTIFY THAT THE AFORESAID LIMITED PARTNERSHIP IS NO LONGER IN EXISTENCE AND GOOD STANDING UNDER THE LAWS OF THE STATE OF DELAWARE HAVING FILED A CERTIFICATE OF CANCELLATION ON THE NINETEENTH DAY OF OCTOBER, A.D. 2007, AT 7:16 O'CLOCK P.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF THE AFORESAID CERTIFICATE OF CANCELLATION IS THE THIRTY-FIRST DAY OF OCTOBER, A.D. 2007.

AND I DO HEREBY FURTHER CERTIFY THAT UPON FILING OF THE AFORESAID CERTIFICATE OF CANCELLATION, THE EXISTENCE OF "EPICREALM LICENSING, LP" WAS TERMINATED.

4084262 8375

071136914



Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 6092927

DATE: 10-22-07

Delaware

PAGE 1

The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF CANCELLATION OF "EPICREALM LICENSING, LP", FILED IN THIS OFFICE ON THE NINETEENTH DAY OF OCTOBER, A.D. 2007, AT 7:16 O'CLOCK P.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF THE AFORESAID CERTIFICATE OF CANCELLATION IS THE THIRTY-FIRST DAY OF OCTOBER, A.D. 2007.

4084262 8100

071136914



Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 6092926

DATE: 10-22-07

*State of Delaware
Secretary of State
Division of Corporations
Delivered 07:32 PM 10/19/2007
FILED 07:16 PM 10/19/2007
SRV 071136914 - 4084262 FILE*

STATE OF DELAWARE

**CERTIFICATE OF CANCELLATION
OF CERTIFICATE OF LIMITED PARTNERSHIP**

The limited partnership organized under the Delaware Revised Uniform Limited Partnership Act (the "Act"), for the purpose of canceling the Certificate of Limited Partnership pursuant to Section 17-203 of the Act, hereby certifies that:

1. The name of the limited partnership is epicRealm Licensing, LP (the "Partnership").
2. The Certificate of Limited Partnership was filed in the Office of the Secretary of State of the State of Delaware on December 27, 2005.
3. This Certificate of Cancellation shall become effective on October 31, 2007.

IN WITNESS WHEREOF, the undersigned, constituting the general partner of the partnership has executed this Certificate of Cancellation as of this 17th day of October, 2007.

EPICREALM LICENSING, LLC
General Partner

By:

Terry Fokas, Manager



Delaware

PAGE 1

The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THAT THE CERTIFICATE OF FORMATION OF THE "EPICREALM LICENSING, LLC", WAS RECEIVED AND FILED IN THIS OFFICE THE SECOND DAY OF DECEMBER, A.D. 2005.

AND I DO HEREBY FURTHER CERTIFY THAT THE AFORESAID LIMITED LIABILITY COMPANY IS NO LONGER IN EXISTENCE AND GOOD STANDING UNDER THE LAWS OF THE STATE OF DELAWARE HAVING FILED A CERTIFICATE OF CANCELLATION ON THE NINETEENTH DAY OF OCTOBER, A.D. 2007, AT 7:22 O'CLOCK P.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF THE AFORESAID CERTIFICATE OF CANCELLATION IS THE THIRTY-FIRST DAY OF OCTOBER, A.D. 2007.

AND I DO HEREBY FURTHER CERTIFY THAT UPON FILING OF THE AFORESAID CERTIFICATE OF CANCELLATION, THE EXISTENCE OF "EPICREALM LICENSING, LLC" WAS TERMINATED.

4070483 8375

071136920



Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State
AUTHENTICATION: 6092934

DATE: 10-22-07

Delaware

PAGE 1

The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF CANCELLATION OF "EPICREALM LICENSING, LLC", FILED IN THIS OFFICE ON THE NINETEENTH DAY OF OCTOBER, A.D. 2007, AT 7:22 O'CLOCK P.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF THE AFORESAID CERTIFICATE OF CANCELLATION IS THE THIRTY-FIRST DAY OF OCTOBER, A.D. 2007.

4070483 8100

071136920



Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 6092933

DATE: 10-22-07

*State of Delaware
Secretary of State
Division of Corporations
Delivered 07:32 PM 10/19/2007
FILED 07:22 PM 10/19/2007
SRV 071136920 - 4070483 FILE*

STATE OF DELAWARE

CERTIFICATE OF CANCELLATION

1. The name of the limited liability company is epicRealm Licensing, LLC.
2. The Certificate of Formation of the limited liability company was filed on December 2, 2005.
3. This Certificate of Cancellation shall become effective on October 31, 2007.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Cancellation this 19 day of October, 2007.

By:


Terry Fokas, Manager